IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2098 OF 2007

Tata Services Limited ..Petitioner

Vs.

M/s. Prime Properties Pvt. Ltd. and ors. ..Respondents

Mr. V.B. Naik with Ms. P.L. Bachani i/by M/s. J.J. Juris for petitioner.

Mr. P.K. Dhakephalkar, Senior Counsel with Ms.Swati Dahibawkar i/by Mr. S.H. Ahuja for respondent no.1.

CORAM: B.H. MARLAPALLE, J.

Date : June 22, 2007.

P.C.:

1. Heard Mr. Naik with Ms. Bachani the learned counsel for the petitioner and Mr. Dhakephalkar the learned Senior Counsel with Mr. Ahuja for the respondent no.1.

2. The respondent no.1 has filed T.E. and R. Suit No. 244/255 of 2002 in the Small Causes Court at Mumbai and in the said suit the present respondent

no.2 is impleaded as defendant no.1, the present petitioner as defendant no.2 and present respondent no.3 as defendant no.3. The suit has been filed for seeking vacant and peaceful possession of the suit premises, namely, Godown Nos.31, 32 and 33 located on the land bearing C.S. No.149 and 4/148, Parel and Sewri Division and situated at Tokershi Jivraj Road, Sewri, Mumbai 400 012. It has been contended by the plaintiff that the defendant no.1 is the tenant of the suit premises and defendant no.2 and defendant no.3 were illegally inducted by defendant no.1, though they claimed to be sub-tenants through defendant no.1. The plaintiffs had earlier filed T.E.R. Suit No. 12/12 of 2001 and in the same Interim Notice No. 440 of 2002 was taken out for withdrawal of the suit to file a fresh suit and the same notice was made absolute. The second suit as filed after Advocate’s notice dated 14/6/2002 was given terminating the tenancy of the defendant no.1 which had replied the same notice through its Advocate on 15/7/2002. It was further contended by the plaintiffs that the suit premises were not protected under the Maharashtra Rent Control Act, 1999 and on 30/9/2002 the defendant no.1 was in

arrears of rent in the month of November, 2001 amounting to Rs.2,21,670.32 which the plaintiffs were entitled to recover with interest and also entitled for mesne profits. It was further contended by the plaintiffs that the defendant nos.2 and 3 were impleaded as they were in illegal occupation of the suit premises, though they had claimed to be sub-tenants of the said premises through the defendant no.1.

3. During the stage of recording of evidence, the defendant no.2 indicated that it had no evidence to adduce and, therefore, as on 5/6/2006 the suit was adjourned for advancing final arguments, but on or about 2/7/2006, the defendant no.2 filed an application at Exh.23 praying to take on record, (a) the Memorandum and Articles of Association of defendant no.2 and (b) the 40th Annual Report of defendant no.2 for the year 2004-05. The defendant no.2 reiterated its claim, as was stated in its Written Statement that its share capital was less than Rs.1 crorer and, therefore, it was protected under the Maharashtra Rent Control Act, 1999. It further

claimed that the suit premises were originally owned by N.M. Wadia Charitable Trust which sold the said premises to the plaintiffs on or about 20/12/1989 and that the earlier owners had recognised the defendant nos.2 and 3 as the sub-tenants of defendant no.1.

4. Issues were framed by the trial court on 4/3/2002 and there are in all nine issues. Issue No.5 could not have been framed and in any case it does not survive as of now. Out of the remaining eight issues there is no issue to determine the status of defendant nos.2 and 3 as claimed by them i.e. the sub-tenants of defendant no.1 as well as whether the defendant nos.2 and 3 are protected under the Maharashtra Rent Control Act, 1999 as their share capital is less than Rs.1 crorer.

5. The learned Judge of the trial court has rejected the application at Exh.23 by the impugned order dated 31/1/2007 on the following grounds:-

(a) The plaintiff has not accepted the status of the defendant nos.2 and 3 as the tenants of

defendant no.1.

(b) Defendant No.2 did not lead any oral evidence and such a statement made by the learned Advocate for defendant No.2 was recorded by the trial court on 5/6/2006.

(c) There is no issue as to the paid up capital of the respondent no.2 framed in the trial of the suit.

6. It is not disputed that the plaintiff has all along disputed the contention of defendant nos.2 and 3 that they are the sub-tenants of the suit premises through defendant no.1 and though the defendants in their Written Statement have taken such a plea, while framing the issues, the trial court has not framed the issue as to whether the defendant nos.2 and 3 are sub-tenants of the suit premises through the defendant no.1. In addition, there is no issue framed as to whether the defendant nos.2 and 3 are protected under the Maharashtra Rent Control Act, 1999. There is also no dispute that on 5/6/2006 the learned Advocate

representing defendant no.2 made a statement in the trial court and which statement was recorded that he did not want to lead any oral evidence and, therefore, the case was adjourned for arguments by consent. One and half months later the defendant no.2 took out the application at Exh.23.

7. Even if the documents sought to be produced are claimed to be public documents within the meaning of Section 74 of the Indian Evidence Act, 1872, for taking them on record, there must be a reason shown in that regard and the reason could be seen in the issues framed by the court. If the plaintiff has been contending that defendant nos.2 and 3 are in unauthorised occupation of the suit premises and the issue regarding their status as sub-tenants through defendant no.1 is not framed in the trial of the suit, the question of the defendant nos.2 and 3 being protected under the Maharashtra Rent Control Act, 1999 cannot be examined. Consequently, the documents sought to be brought on record, therefore, were not relevant documents and in any case the learned Advocate of defendant no.2 had stated that the company

did not wish to adduce any oral evidence. On the backdrop of these obtaining circumstances, it cannot be said that the trial court fell in grave error or passed a perverse order rejecting the application at Exh.23.

8. Hence, there is no case made out to cause interference in the impugned order dated 31/1/2007 under the supervisory powers of this court under Article 227 of the Constitution.

9. The petition is, therefore, rejected summarily. Ad-interim relief granted earlier stands vacated.

10. The oral application for continuing the ad-interim order is hereby rejected as the petition impugns an interlocutory order.

(B.H. Marlapalle,J.)